

General Terms and Conditions of POWARE Industrial Automation B.V.

The private limited liability company POWARE Industrial Automation B.V. is registered with the Chamber of Commerce under number 57142467, having its registered office in Amersfoort and its place of business at Algolweg 11 A (3821 BG) in Amersfoort.

Article 1 – Definitions

1. In these General Terms and Conditions, the terms below are defined as follows, unless expressly stated otherwise.
2. POWARE Industrial Automation B.V. is a subsidiary of EXPRO Holding B.V. These General Terms and Conditions apply to both EXPRO Holding B.V. and to POWARE Industrial Automation B.V., hereinafter: POWARE.
3. Company: a natural person or legal entity acting in the performance of a profession or business.
4. Client: the Company that enters into an Agreement with POWARE.
5. POWARE: a provider of specialist services in the field of industrial automation.
6. Specialist: a natural person performing the Assignment.
7. Offer: any written offer to the Client for the provision of Services by POWARE.
8. Services: The performance of consultancy assignments and/or project work at the Client's premises.
9. Assignment: the performance of the Agreement by POWARE with respect to the services requested by the Client.
10. Agreement: the Agreement relating to the provision and performance of Services.
11. Website: the website used by POWARE is <https://www.poware.nl>.

Article 2 – Applicability

1. These General Terms and Conditions apply to every Offer, Agreement between POWARE and the Client, and to every service offered by POWARE, as well as their performance.
2. Any applicability of the Client's General Terms and Conditions is expressly rejected. Any deviations from these General Terms and Conditions may only be made with POWARE's explicit written consent.
3. These General Terms and Conditions also apply to any of the Client's additional, amended or follow-up orders.
4. If one or more provisions of these General Terms and Conditions are or will be wholly or partially void or nullified, the remaining provisions of these General Terms and Conditions shall continue to be effective, and the void or annulled provision(s) shall be replaced by a provision with the same effect and purport as the original provision. Any ambiguities regarding the content, interpretation or situations not covered by these General Terms and Conditions shall be assessed and interpreted in accordance with the intent of these General Terms and Conditions.
5. The applicability of Book 7, Sections 404 and 407(2) of the Dutch Civil Code is excluded.

Article 3 – Offer and conclusion of the Agreement

1. All offers made by POWARE are without obligation, unless expressly stated otherwise in writing.
2. Any time limits specified in POWARE's quotation are indicative and, if exceeded, do not entitle the Client to terminate the contract or claim compensation, unless expressly agreed otherwise.
3. POWARE is not bound by an Offer if the Client could reasonably have expected, or should have understood or ought to have understood, that the Offer contained an obvious error or clerical mistake. The Client cannot derive any rights from such an error or clerical mistake.
4. The Agreement shall have been concluded from the moment the Client has accepted an Offer from POWARE in writing, or has confirmed the Agreement verbally.
5. No right of withdrawal is applicable. If the Client cancels a confirmed Assignment before the Agreement has commenced, the Client must pay compensation amounting to one month's turnover for the Assignment in question, as set out in the Assignment Agreement.
6. The specified start date of the Assignment shall not be binding, unless expressly agreed otherwise.

Article 4 – Duration of the Agreement

1. If and when an Agreement has been concluded between the Client and POWARE, the duration of this Agreement shall be in accordance with the agreement made between the parties.
2. Both the Client and POWARE may terminate the Agreement pursuant to an attributable breach of the Agreement if the other party has been given written notice of default, and has been granted a reasonable period of time to fulfil its obligations, and persists with culpable failure. This also includes the Client's payment and cooperation obligations.
3. Termination of the Agreement shall not affect the Client's payment obligations if POWARE has performed work or delivered services at the time of termination. The Client shall pay the agreed fee in full.
4. The parties are entitled to terminate an Agreement prematurely, subject to a one-month notice period, unless otherwise agreed.
5. Both the Client and POWARE may terminate the Agreement in whole or in part in writing with immediate effect, without further notice of default, in the event that either party is subject to a moratorium on payments, has filed for bankruptcy, or the relevant company is wound up. Should a situation as described above arise, POWARE shall under no circumstances be required to refund any amounts already received and/or to pay compensation for any loss.

Article 5 – Additional work and amendments

1. If, during the performance of the Agreement, it transpires that the Agreement needs to be amended and/or supplemented, or if, at the Client's request, further work is required in order to achieve the Client's desired result, the Client shall be required to pay for this additional work in accordance with the agreed rate. POWARE is not bound by compliance with this request and may require the Client to enter into a separate Agreement for this purpose.
2. If and when a fixed price has been agreed for the provision of certain services, and the performance of those services leads to additional (urgent) work that cannot reasonably be deemed to be included in the fixed price, POWARE shall in consultation with the Client be entitled to charge such costs to the Client.

Article 6 – Prices and payment

1. The applicable (hourly) rate shall be determined for each Assignment or Agreement.
2. Invoices are submitted on a weekly or monthly basis pursuant to (time sheet) forms used by the Client and/or POWARE, unless otherwise agreed.
3. The rates may be indexed annually with respect to an (expected) increase in general operating costs.
4. Where the Client is bound by a periodic payment obligation, POWARE shall be entitled to adjust the applicable prices and rates in writing (only) in accordance with the terms of the Agreement, subject to a notice period of at least one month, unless expressly agreed otherwise.
5. In the event of urgency, or if POWARE will be required to carry out its work urgently at the Client's instruction, the Client shall be required to reimburse the additional costs incurred as a result of the urgency.
6. If the Parties have agreed on a deposit, the deposit must be paid by the Client prior to POWARE's commencement of the work.
7. The Client undertakes to pay for POWARE's services as specified in the Agreement, and must pay the agreed amount no later than 30 days from the invoice date, unless otherwise agreed.
8. The Client must pay these costs into POWARE's bank account number and the associated details which have been provided to the Client. Barring exceptional circumstances, the Client may only agree on a different payment deadline for the amount due with POWARE's express written consent.
9. Complaints regarding the amount of the invoice must have been received by POWARE in writing within 7 days from the date of dispatch of the invoice in question. Complaints do not suspend the Client's payment obligation.

Article 7 – Debt collection policy

1. The Client shall be in default in the event that the Client fails to meet its payment obligation and has not fulfilled its obligation within the specified payment term.
2. From the date the Client is in default, POWARE may, without further notice of default, claim statutory commercial interest from the first day of the default up to full payment, and compensation of the extrajudicial costs in accordance with Book 6, Section 96 of the Dutch Civil Code, to be calculated in accordance with the scale set out in the Decree on the Compensation of Extrajudicial Collection Costs of 1 July 2012.
3. If POWARE has incurred additional or higher reasonably necessary costs, such costs shall be eligible for compensation. Any incurred legal and enforcement costs shall also be borne by the Client.
4. Payments made by the Client shall first be applied to settle the (collection) costs due, then to settle the interest due, and shall subsequently be deducted from the part of the principal amount to be designated by POWARE.

Article 8 – Performance of the Agreement

1. POWARE shall endeavour to perform the Agreement according to best practice, in line with all due care, in line with industry standards. All services shall be provided on a best-efforts basis, unless otherwise specifically agreed.
2. POWARE is at its own discretion entitled to engage third parties for the performance of the services.
3. If the commencement, progress or delivery of the services or work is delayed because, for example, the Client has failed to provide all the requested information or has not provided it in good time, fails to cooperate satisfactorily, the advance payment has not been received by POWARE in time, or due to other circumstances for which the Client bears the risk and expense, POWARE shall be entitled to a reasonable extension of the delivery period. The specified time limits are never strict deadlines.
4. Any loss and additional costs resulting from a delay due to a cause referred to in paragraph 1 shall be at the Client's expense and risk and shall be charged by POWARE to the Client.
5. In the event of a performance in phases, or where the Client is required to give approval, POWARE shall be entitled to suspend performance of the Agreement up to the moment that the Client has given its approval.
6. Due to the type of POWARE's work, the work cannot commence until the Client has provided all the required information. The Client bears the risk and any resulting loss or loss if they fail to provide the necessary information in a timely manner and expressly indemnifies POWARE against all consequences and any resulting loss or damage to the Client and POWARE.
7. In the event that the Client must provide materials, programmes, information, assistance from its employees and so on, the Client must provide these items upon POWARE's first request. If this provision is not complied with, POWARE will be entitled to suspend its work up to the moment of compliance by the Client.

Article 9 – Privacy, data processing and security

1. POWARE will handle the (personal) data of the Client and Users of the website with due care and will only use such data in accordance with the Privacy Statement. If requested to do so, POWARE will inform the data subjects accordingly. Questions regarding the processing of personal data and further information may be submitted by email to administratie@poware.nl.
2. The Client is the responsible party for the processing of data being processed using a POWARE service. The Client also guarantees that the content of the data is not unlawful and does not infringe any third-party rights. With respect to this, the Client indemnifies POWARE against any claim (including legal claims) relating to these data or the performance of the Agreement.
3. POWARE acts in accordance with the applicable laws and regulations. POWARE provides a level of security that is not unreasonable in view of the state of the art, the sensitivity of the data, and the associated costs.

Article 10 – Suspension

1. POWARE is entitled to retain the data, data files, software and other items received or produced by it if the Client has not yet (fully) met its payment obligations, even if it would otherwise have been required to do so had payment been made.
2. POWARE is entitled to suspend the performance of its obligations from the moment the Client is in default of any obligation arising from the Agreement, including late payment of its invoices. The suspension shall be confirmed to the Client in writing without delay. In that case, POWARE shall not be liable for any loss, in any form whatsoever, resulting from the suspension of its activities.

Article 11 – Force majeure

1. POWARE shall not be liable if, as a result of a force majeure event, it is unable to fulfil its obligations under the Agreement. During the force majeure period, POWARE shall be entitled to suspend its obligations under the Agreement for the duration of the force majeure event.
2. Force majeure on the part of POWARE shall in any event include, however, is not limited to: (i) force majeure on the part of POWARE's suppliers, (ii) the failure of suppliers prescribed or recommended by the Client to POWARE to fulfil their obligations properly, (iii) defects in goods, equipment, software or materials from third parties, (iv) government actions, (v) power cuts, (vi) disruption to the internet, data networks and telecommunications facilities (for example, due to cybercrime and hacking), (vii) natural disasters, (viii) war and terrorist attacks, (ix) general transport problems, (x) widespread illness among staff, and (xi) other situations which, at POWARE's discretion, are beyond its control and which temporarily or permanently prevent it from fulfilling its obligations.
3. POWARE's obligations shall be suspended for the duration of force majeure. However, this suspension shall not apply to obligations not comprised by the force majeure and which arose prior to the occurrence of the force majeure;
4. If a force majeure situation continues for more than two months, or as soon as it is an established fact that the force majeure will continue for more than two months, either party may terminate the Agreement in writing. If any performance has already been provided under the Agreement, the parties shall in such a case settle accounts on a pro rata basis, with neither party holding a balance due to the other.

Article 12 – Limitation of liability

1. In the event of an attributable breach by POWARE, POWARE shall only be liable to pay any compensation if the Client has given notice of default to POWARE within 14 days after discovering the breach, and POWARE has subsequently failed to remedy this breach within the reasonable period specified in the notice of default. The notice of default must be submitted in writing and must contain an accurate and detailed description of the breach or defect to the extent that POWARE is able to respond appropriately.
2. If the provision of services and/or the performance of Assignments by POWARE gives rise to liability on the part of POWARE, such liability shall be limited to the costs charged with respect to the Assignment (but not exceeding a period of twelve months prior to the notice of default) in respect of direct loss. Direct loss refers to any reasonable costs incurred to limit or prevent direct loss, the determination of the cause of the loss, the direct loss itself, the liability and the method of rectification, as well as the costs of emergency measures.
3. POWARE shall not be liable for consequential loss, indirect loss, business loss, loss of profit and/or loss suffered, lost savings, loss due to business interruption and loss resulting from the use of services provided by POWARE, loss due to loss of data, loss due to exceeding delivery deadlines, consequential loss, loss due to delay and interest loss.
4. The amount of compensation is further limited to a maximum of €100,000 per incident.
5. The Client is responsible for creating and maintaining a safe working environment in accordance with applicable laws and regulations if POWARE performs work on the Client's premises.
6. POWARE shall not be liable for any loss (possibly) resulting from any act or omission based on (incomplete and/or inaccurate) information on the website or on linked websites.
7. POWARE bears no responsibility for errors and/or irregularities in the functionality of the (website and/or) software, malfunctions or the unavailability of the (website and/or) software for any reason whatsoever.
8. POWARE shall not be liable for any loss related to or arising from the failure or malfunction of computer networks or systems (risk of failure), if the loss is the result of a failure or malfunction in the supply of energy.
9. POWARE does not guarantee the proper and complete transmission of the content of emails sent by or on behalf of POWARE, nor their timely receipt.
10. The Client guarantees the accuracy and completeness of the information and requirements provided by them in relation to the Assignment. POWARE expressly excludes all liability for (consequential) loss.
11. All claims by the Client arising from a failure on the part of POWARE shall lapse if POWARE has not been notified of them in writing, stating the reasons, within one year after the Client became aware or was reasonably able to become aware of the facts on which the claims are based.

Article 13 – Non-solicitation clause

1. Without POWARE's prior written consent, and a reasonable financial compensation agreed for that purpose, the Client is not allowed, without POWARE's involvement, to directly employ or otherwise engage employees of POWARE or third parties engaged and/or introduced by POWARE during and for up to twelve months after the termination of the Assignment (irrespective of the reason for termination).
2. The prohibition in Article 13.1 moreover applies to Specialists with whom the Client has come into contact through the Contractor during an Assignment. This prohibition applies for a period of twelve months from the date when the contact referred to here commenced.
3. The prohibition in Article 13.1 moreover applies to Specialists who are placed with third parties by the Client. When subletting Specialists from the Contractor, the Client must treat its non-solicitation agreements with third parties in the same way as the non-solicitation agreements with the Contractor.
4. In the event of a breach of the non-solicitation clause (Articles 13.1 to 13.3), the Client shall be liable to pay a penalty, payable on demand, of €25,000, plus a penalty of €1,000 for each day that the breach continues, up to a maximum of €100,000.

Article 14 – Confidentiality

1. POWARE and the Client undertake to observe confidentiality with regard to all confidential information obtained under an Assignment. Such confidentiality ensues from the Assignment or from information which can reasonably be expected to be confidential.
2. If POWARE is required by a statutory provision or a court ruling to disclose the confidential information to the authorities, a competent court or a designated third party, and POWARE cannot appeal to a right of non-disclosure, POWARE shall not be liable for any compensation and the Client shall not be entitled to terminate the Agreement.
3. POWARE and the Client shall also impose the confidentiality obligation on any third parties engaged by them.

Article 15 – Indemnification and accuracy of information

1. The Client is the responsible party for the accuracy, reliability and completeness of all data, information, documents and/or records provided by the Client to POWARE under an Assignment. The Client shall be the responsible party even if such data originates from third parties.

2. The Client indemnifies POWARE against any liability arising from the failure to fulfil, or the late fulfilment of the obligations set out in the previous paragraph.
3. The Client indemnifies POWARE against any claims by third parties relating to intellectual property rights in the data and information provided by the Client, which may be used in the performance of the Agreement.
4. If the Client provides POWARE with electronic files, software or data storage media, the Client guarantees that these are free from viruses and defects.

Article 16 – Complaints

1. In the event that the Client is dissatisfied with the services provided by POWARE, the Client must report any such complaints as soon as possible, yet no later than 14 days after the event giving rise to the complaint. Complaints may be reported through administratie@poware.nl with: "Complaint" in the subject line.
2. The complaint must be sufficiently substantiated and/or explained by the Client in order to facilitate consideration of the complaint by POWARE.
3. POWARE will respond to the substance of the complaint as soon as possible, yet no later than 14 days after receipt of the complaint.
4. The parties shall endeavour to reach a joint solution.

Article 17 – Governing law

1. The legal relationship between POWARE and the Client shall be governed by Dutch law.
2. POWARE may amend these General Terms and Conditions unilaterally. Please refer to the website for the most recent version. Any disputes arising from or with respect to the Agreement between POWARE and the Client shall be settled by the competent court of the Midden-Nederland District Court, Utrecht location, unless mandatory law provisions designate a different competent court.